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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Lauren Scott, Kathleen Koffman and
Heather Silversmith, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

Apple, Inc.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs Lauren Scott, Kathleen Koffman and Heather Silversmith,
individually and on behalf of the class described below, by their attorneys, make
the following allegations pursuant to the investigation of counsel and based upon
information and belief, except as to allegations specifically pertaining to Plaintiffs
and counsel, which are based on personal knowledge.

I. OVERVIEW OF THE ACTION

1. Plaintiffs bring this class action on behalf of themselves and other
parents and guardians who (a) permitted their minor children to download from

1 defendant Apple, Inc. ("Apple" or "Defendant") a free application ("App") and (b)
2 then incurred charges for game-related voidable purchases that the minor was
3 induced by Apple to make, without the parents' and guardians' knowledge or
4 authorization.

5 2. In addition to its distinction as a market leader in the manufacture,
6 marketing and sale of computers and computing devices, Apple is also the leading
7 seller of "Apps," i.e., software applications that users download on their mobile
8 computing devices. Among the many thousands of Apps that Apple offers for sale
9 are gaming Apps targeted at children. Although numerous gaming Apps are
10 offered for free and may be downloaded at no cost, many such games are designed
11 to induce purchases of what Apple refers to as "In-App Purchases" or "In-App
12 Content," i.e., virtual supplies, ammunition, fruits and vegetables, cash and other
13 fake "currency," etc., within the game in order to play the game as it was designed
14 to be played ("Game Currency"). These games are highly addictive, designed
15 deliberately so, and tend to compel children playing them to purchase large
16 quantities of Game Currency, amounting to as much as \$100 per purchase or more.
17 As such, the sale of Game Currency to minors is highly lucrative.

18 3. Apple requires its users to authenticate their accounts by entering a
19 password prior to purchasing and/or downloading an App or buying Game
20 Currency. Until recently, however, once the password was entered, Apple
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1 permitted the user, even if a minor, to buy Game Currency for up to fifteen minutes
2 without re-entering the password. This practice enabled minors to buy Game
3 Currency, in one-click sums of \$99.99 or more, without entering a password,
4 causing Apple to pocket millions of dollars from such Game Currency transactions
5 with minors and without the authorization of their parents, whose credit cards or
6 PayPal accounts are automatically charged for the purchases. Further, because the
7 passwords now required for purchases of Game Currency are the same passwords
8 required for any Apple purchase, minors who are aware of the password may
9 purchase Game Currency without authorization from their parents for subsequent
10 purchases.
11

12 4. Apple's practice of selling Game Currency to children, garnering
13 millions of dollars of ill-gotten gains thereby, has attracted the attention of the
14 Federal Trade Commission ("FTC"). Such attention caused Apple in early 2011 to
15 begin requiring the entry of a password for all individual transactions, and to warn
16 users that "free" games may contain in-app content for sale. Nevertheless, Apple
17 continues to sell Game Currency to minors, evidently raking in more than \$1
18 million per month from the "Smurfs' Village" App alone.
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20 5. Plaintiffs bring this action for monetary and equitable relief under
21 California's contract laws, Consumers Legal Remedies Act, Business and
22 Professions Code Sections 17200 *et seq.*, and/or for Unjust Enrichment.
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II. JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d). This is a class action involving more than 100 class members. Plaintiffs Scott and Silversmith, and many other members of the Class, are citizens of a state different from Defendant, and the amount in controversy, in the aggregate, exceeds the sum of \$5 million exclusive of interest and costs.

7. Defendant is a California corporation, has its principal place of business in Cupertino, California, transacts business in this District, has subjected itself to this Court's jurisdiction through such activity, and a substantial part of the events and omissions giving rise to the claim occurred in this District. Accordingly, venue is proper in this District under 28 U.S.C. § 1391.

III. PARTIES

8. Plaintiff Lauren Scott resides in Granbury, Texas with her husband and their 3½-year-old son. Ms. Scott permitted her son to download onto her iPhone the "free" gaming App "Tap Zoo." Because it said it was "free," Ms. Scott entered her password in her iPhone, and handed the iPhone to her son. ***Within 60 seconds***, her account was charged \$99.99 plus tax (\$8.25) for such Game Currency as a "Trunk of Coins." That transaction between Apple and a four-year-old child cost Ms. Scott \$108.24 within one minute after she entered her password and handed her iPhone to her son.

1 9. Plaintiff Kathleen Koffman resides in Gardena, California with her
2 nine-year-old son. Ms. Koffman downloaded onto her iTouch the “free” gaming
3 Apps “X-Mas Resort” and “F.A.S.T.” for her son. Ms. Koffman, however, was
4 completely unaware of the fact that within *several days*, her account was charged
5 \$338.72 for such Game Currency in the X-Mas Resort App as “Shells” and
6 \$329.87 for such Game Currency in the F.A.S.T. App as “Missiles” and other
7 forms of ammunition.
8

9 10. Plaintiff Heather Silversmith resides in Rockville, Maryland with her
10 husband, their seven-year-old son and their six-year-old daughter. Without Ms.
11 Silversmith’s knowledge and authorization, Ms. Silversmith’s daughter purchased
12 “Gems” while playing the “Fashion Story” App, and Ms. Silversmith’s iTunes
13 account was charged \$99.99 for her six-year-old daughter’s purchase.
14

15 11. Defendant Apple is a California corporation with its principal place of
16 business in Cupertino, California.

17 **IV. FACTUAL ALLEGATIONS**

18 12. Apple is one of the leading manufacturers and sellers of computing
19 products, including the iMac desktop computer, MacBook laptops, iPad tablets,
20 iPhone smart phones, and iPod and iTouch handheld music players and gaming
21 devices.
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1 13. Apple also sells content (e.g., music, movies, TV shows, audio books
2 and Apps) that can be downloaded on its and other manufacturers' computing
3 devices. Apple sells Apps through its "App Store," which may be accessed
4 directly from certain devices (such as, e.g., iPads, iPhones and iTouches) or
5 through other Apple-owned retail outlets (e.g., iTunes, Mac App Store,
6 iBookstore).

7 14. Apple offers Apps in many genres, including travel, business,
8 education, finance, entertainment and games. Games are by far the most
9 downloaded of all genres. Apps can be downloaded for free, or for a licensing fee
10 that ranges from \$.99 to \$9.99 or more. It is the gaming Apps that Apple targets
11 and sells to minor children that are the subject of this action.

12 15. Apple is by far the leading retailer of Apps. Apps are either
13 developed by Apple or licensed to Apple by independent App developers. The
14 App developers license their Apps to Apple for sale at iTunes, and Apple splits the
15 revenues earned from the sale of the App, or from the sale of In-App Purchases,
16 with the App developer.

17 16. Apple supervises and controls the function and operation of the Apps
18 it sells. Before an App is made available by Apple, Apple staff test the App and
19 confirm its compliance with dozens of rules that Apple imposes unilaterally. If
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1 Apple deems an App noncompliant with Apple's rules, Apple will not make the
2 App available for sale.

3 17. In all instances relevant to this action, the sale of the App and/or any
4 Game Currency is a transaction directly between Apple and the consumer. There
5 is no privity between the user and the developer of the App (unless Apple itself is
6 the App developer); Apple, and Apple alone, is the provider to the user of the App;
7 Apple charges its customer's credit card or PayPal account, and indeed an App
8 developer never receives a customer's credit card number or PayPal account
9 information.
10

11 18. Anyone thirteen years old or older can open an account to purchase
12 (i.e., license) content from Apple. Opening an account requires, among other
13 things, selecting a user name and password, providing certain contact and other
14 information, and agreeing to Apple's Terms & Conditions. Users may then make
15 purchases in any number of ways, including payment by "iTunes Cards," "iTunes
16 Gift Certificates," "Content Codes" "Allowance Account balances," and, most
17 frequently, by supplying Apple with a credit card number or PayPal account. For
18 users who specify credit card or PayPal payment, Apple automatically draws funds
19 from the account holder's credit card or PayPal account.
20

21 19. Prior to the purchase of an App, Apple requires account holders to
22 enter their password. Until recently, however, once the account holder entered that
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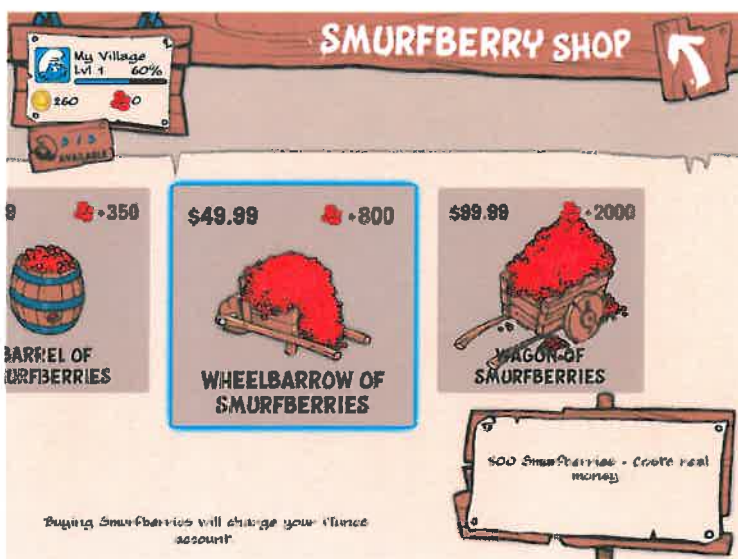
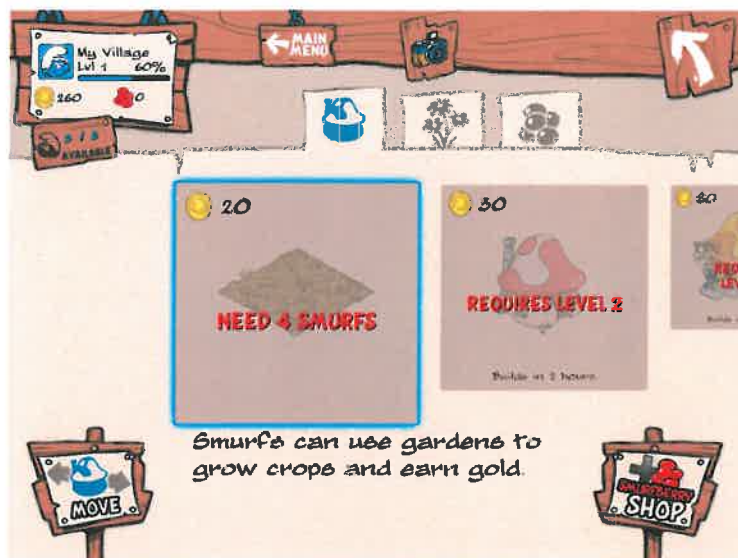
1 password, he or she (or in cases relevant to this Complaint, his or her minor child)
2 could make purchases for up to fifteen minutes without re-entering the password.
3 Thus, a parent could enter his or her password to permit a child to download a free
4 gaming App, and then allow the child to download and play the game. What
5 Apple did not tell parents, however, is that their child was then able to purchase
6 Game Currency for fifteen minutes without any supervision, oversight or
7 authorization.
8

9 20. In early 2011, Apple appears to have changed its practice to require
10 the input of a password for every individual purchase, thereby ending the fifteen
11 minute purchase window. Apple ostensibly made this change because the FTC
12 was about to commence an investigation into Apple's improper sales practices.
13 Even after this change, Apple continues to sell Game Currency to minors. Minors
14 thirteen and older are permitted to open their own Apple accounts, and minors
15 younger than thirteen may purchase Game Currency by using their parents' general
16 Apple password (no special Apple password is required to purchase Game
17 Currency).
18

19 21. As alleged above, many games are targeted to minors, and are free or
20 cost a nominal charge to download. Many such games, however, are designed
21 solely to lure minors to purchase Game Currency in order to meet the objectives of
22 the game.
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22. Such games, by design, are highly addictive. They were developed strategically to induce purchases of Game Currency. For example, the game “Smurfs’ Village” is free to download. The object of the game, however, is to build a virtual village, and the construction process is greatly sped up by the purchase of “Smurfberries,” Game Currency that costs real money. Embedded in the Smurfs’ Village gaming App, the “Smurfberry Shop” offers for sale different amounts of Smurfberries. Fifty Smurfberries cost \$4.99; 1,000 Smurfberries cost \$59; and 2,000 Smurfberries cost \$99.99. *See* following screen shots of Smurfs’ Village:





23. A news story about Apple's business scheme states:

The Federal Trade Commission has confirmed it will investigate mobile games that are advertised as free but then entice players into buying virtual goods within the game, especially those that target younger users. This comes after several complaints surfaced by parents who

1 found out their children were racking up huge purchases
2 without understanding what they were doing,
3 including one young gamer who managed to download
4 more than \$1,400 in virtual Smurfs' currency.

5 Smurfs' Village leads the headlines for this story. It's a
6 "free" iPhone game clearly targeting a young
7 demographic. Once in the game, players are asked to
8 spend Smurfberries at every turn. That problem is solved
9 easily enough with a menu that offers the ability to buy
10 more berries. Even though Smurfberries aren't real, the
11 money used to buy them is.

12 Players are lured in by enticing pictures of huge
13 bucketfuls of Smurfberries, and just a couple taps is all it
14 takes to drain money out of an iPhone account holder's
15 credit card and make players flush with in-game funds.

16 The app does ask users to confirm purchases, but as the
17 FTC notes, some users may not fully understand what
18 they're confirming. "Consumers, particularly children,
19 are unlikely to understand the ramifications of these
20 types of purchases," wrote FTC chairman Jon Leibowitz
21 in a statement.

22 Massachusetts Congressman Edward Markey responded,
23 "What may appear in these games to be virtual coins and
24 prizes to children result in very real costs to parents. I am
pleased that the FTC has responded, and as the use of
mobile apps continues to increase, I will continue to
actively monitor developments in this important area."

The Smurfs game has gained so much attention because
it exploded to the #1 spot of top-earning iPhone games.
That's when the media learned of the easy
microtransaction system in the game. There's even a
button to purchase \$100 in Smurfberries, which most
rational, hard-working people would probably never
click, but appears mouthwatering to players who think
they're just innocently playing a game.

1 While some of the charges definitely come as the result
 2 of a parent legitimately buying berries for their kid, there
 3 is also controversy over the 15-minute user
 4 authentication buffer. A dad could download the Smurfs
 5 game onto his iPad and hand it over to his daughter to
 6 play. The daughter can then rack up as many charges as
 7 she wants for 15 minutes before the app will ask for re-
 8 verification of the account. Before you know it, your
 9 credit card statement's been smurfed right in the smurf.

10 Mark Raby, *FTC agrees to investigate "deceptively free" iPhone games*,
 11 [http://www.gamesradar.com/iphone/iphone/news/z/a-2011022318018755018/g-](http://www.gamesradar.com/iphone/iphone/news/z/a-2011022318018755018/g-201010071388669064)
 12 [201010071388669064](http://www.gamesradar.com/iphone/iphone/news/z/a-2011022318018755018/g-201010071388669064).

13 24. Smurfs' Village is a tremendous moneymaker for Apple:

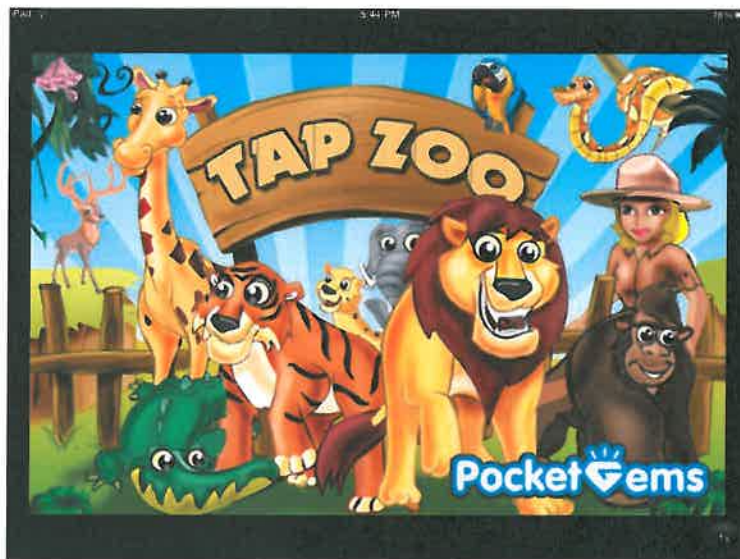
14 [An] 8 year old bought \$1,400 of Smurfberries. Free to
 15 download, but billed for in-app purchases. [App
 16 developer] Capcom is rumored to make \$4 million/month
 17 from Smurfberries. Apple receives 30%. [The] Mother
 18 said this preyed on children -- game is for kids 4+.

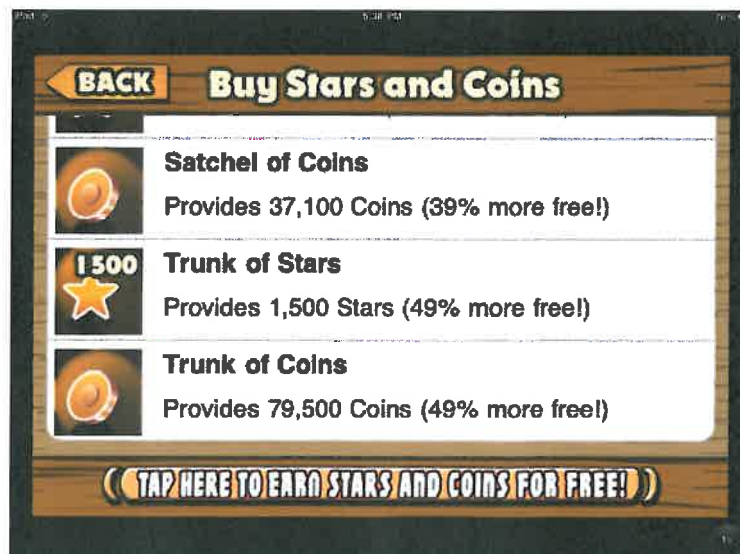
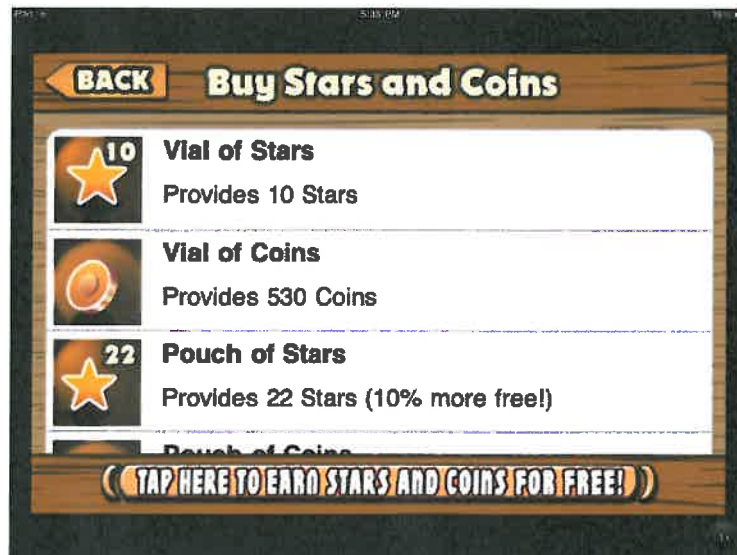
19 Farnaz Alemi (with James Chang), "Gaming the System: Whether Minors Should
 20 be Able to Disaffirm Online," posted on Rebecca Tushnet's 43(B)log,
 21 <http://tushnet.blogspot.com/2011/04/governing-magic-circle-panel-3.html>.

22 25. Smurfs' Village is by no means the only App that preys on children in
 23 such manner. Apple offers many games that use the same bait-and-switch business
 24 scheme as Smurfs' Village. Apple entices the child with a free download of a
 gaming platform that then offers the sale of irresistible Game Currency in order to
 enjoy the game as it was designed to be "played." These games have no

1 redeeming purpose whatsoever. Within seconds of “playing” them, one is led to a
2 screen that sells virtual currency, so that the “player” can build things or “have”
3 other virtual things. Such games include “Tap Zoo,” which as of the date of the
4 filing of this complaint is the new number one revenue generating App, and which
5 sells virtual trunks, satchels, pouches and vials of coins and stars, which are to be
6 used in order to purchase virtual animals.

7
8 26. What is particularly egregious about Tap Zoo is that the store lists
9 items for sale, but does not display how much the items cost. That only occurs
10 when a confirmation window is displayed. To illustrate, *see* the following screen
11 shots of the new number one App Tap Zoo:







27. Other “free” gaming Apps that contain embedded Gaming Currency for sale with real money include “Bakery Story” (which sells virtual gems that are used to acquire items for the virtual bakery), “Treasure Story” (which sells virtual gems), “City Story” (which sells virtual cash), “Tap Fish” (which sells virtual “fish bucks”), “Glass Tower” (which sells virtual “level packs”), “Sundae Maker” (which sells virtual ice cream and toppings), “Cake Maker” (which sells virtual cake ingredients and other cake-making items), and many, many others. In light of how much revenue is flowing to Apple through Smurfs’ Village, it is clear that these games, taken collectively, put substantial sums in Apple’s coffers.

1 28. The targeting of children by Apple and inducing them to purchase,
2 without the knowledge or authorization of their parents, millions of dollars of
3 Game Currency is unlawful exploitation in the extreme. Fortunately for the
4 members of the Class, such purchases of Game Currency constitute voidable
5 contracts because they were entered into with minors.

6 29. Either in response to the FTC's investigation, or as a result of a guilty
7 conscience, Apple now purports to display the following warning next to the
8 "Install" button of the App: "PLEASE NOTE: [Smurfs' Village] is free to play,
9 but charges real money for additional in-app content. You may lock out the ability
10 to purchase in-app content by adjusting your device's settings." **Nevertheless,**
11 **Apple continues to sell Game Currency to minors.**

12 30. Apple has not offered to return to its account holders any of the
13 millions of dollars it received from their minor children's purchases of Game
14 Currency.
15
16

17 **V. CLASS ACTION ALLEGATIONS**

18 31. Plaintiffs bring this action as a class action for monetary and equitable
19 relief pursuant to Rules 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure
20 on behalf of the following class: All persons in the United States who paid for an
21 unauthorized purchase of Game Currency made by their minor children (the
22 "Class"). Excluded from the Class are Apple; any entity in which it has a
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1 controlling interest; any of its parents, subsidiaries, affiliates, officers, directors,
2 employees and members of their immediate families; and members of the federal
3 judiciary.

4 32. The members of the Class are ascertainable, and are so numerous that
5 joinder is impracticable. Plaintiffs believe there are thousands of members of the
6 Class, whose names and addresses are in Apple's records.

7 33. There are questions of law or fact common to the Class, and such
8 questions predominate over individual questions. Apple pursued a common course
9 of conduct toward the Class as alleged. This action arises out of a common
10 nucleus of operative facts. Common questions include:
11

- 12 (a) Whether Apple sold Game Currency;
- 13 (b) Whether Apple sold Game Currency to minors;
- 14 (c) Whether Apple knew that many gaming Apps it sells are
15 designed to induce minors to purchase Game Currency;
- 16 (d) Whether Apple intended for minors to purchase such
17 Game Currency without the knowledge or authorization
18 of the minors' parents or guardians;
- 19 (d) Whether Apple's sales to minors of Game Currency
20 constitute voidable contracts;
- 21 (e) Whether Apple's scheme to induce minors to purchase
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1 Game Currency violates California's Consumers Legal
2 Remedies Act, Cal. Civ. Code § 1750, and Unfair
3 Competition Law, Business & Professions Code § 17200
4 *et seq.*;

- 5 (f) Whether Apple was unjustly enriched by its scheme; and
6 (g) Whether Plaintiffs and the Class have been damaged, and
7 if so, in what amount.
8

9 34. Plaintiffs' claims are typical of the claims of other members of the
10 Class, and there is no defense available to Apple that is unique to Plaintiffs.
11 Plaintiffs paid hundreds of dollars to Apple for unauthorized purchases of Game
12 Currency made by their minor children.

13 35. Plaintiffs will fairly and adequately represent the interests of the
14 Class. Plaintiffs have no interests that are antagonistic to those of the Class.
15 Plaintiffs have the ability to assist and adequately protect the rights and interests of
16 the Class during the litigation. Further, Plaintiffs are represented by counsel who
17 are competent and experienced in this type of class action litigation.
18

19 36. This class action is not only the appropriate method for the fair and
20 efficient adjudication of the controversy, it is the superior method because:

- 21 (a) The joinder of thousands of geographically diverse
22 individual class members is impracticable, cumbersome,
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1 unduly burdensome, and a waste of judicial and litigation
2 resources;

3 (b) There is no special interest by class members in
4 individually controlling prosecution of separate causes of
5 action;

6 (c) Class members' individual claims are relatively modest
7 compared with the expense of litigating the claim,
8 thereby making it impracticable, unduly burdensome,
9 expensive, if not totally impossible, to justify individual
10 class members addressing their loss;
11

12 (d) When Apple's liability has been adjudicated, claims of
13 all class members can be determined by the Court and
14 administered efficiently in a manner that is far less
15 erroneous, burdensome, and expensive than if it were
16 attempted through filing, discovery, and trial of many
17 individual cases;
18

19 (e) This class action will promote orderly, efficient,
20 expeditious, and appropriate adjudication and
21 administration of class claims to promote economies of
22 time, resources, and limited pool of recovery;
23
24

- 1 (f) This class action will assure uniformity of decisions
2 among class members;
3
4 (g) Without this class action, restitution will not be ordered
5 and Apple will be able to reap the benefits or profits of
6 its wrongdoing; and
7
8 (h) The resolution of this controversy through this class
9 action presents fewer management difficulties than
10 individual claims filed in which the parties may be
11 subject to varying indifferent adjudications of their
12 rights.

13 37. Further, class certification is appropriate because Apple has acted, or
14 refused to act, on grounds generally applicable to the Class, making class-wide
15 equitable, injunctive, declaratory and monetary relief appropriate. In addition, the
16 prosecution of separate actions by or against individual members of the Class
17 would create a risk of incompatible standards of conduct for Apple and
18 inconsistent or varying adjudications for all parties. A class action is superior to
19 other available methods for the fair and efficient adjudication of this action.
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VI. CALIFORNIA LAW APPLIES TO THE ENTIRE CLASS

38. California's substantive laws apply to every member of the Class, regardless of where in the United States the class member resides. Apple imposes on its account holders a set of Terms and Conditions that must be accepted before becoming an account holder and before making any purchases or downloads from Apple's iTunes Store. Among such Terms and Conditions is the following:

The Services are operated by Apple from its offices in the United States. You agree to comply with all local, state, federal, and national laws, statutes, ordinances, and regulations that apply to your use of the Services. All transactions on the Services are governed by California law, without giving effect to its conflict of law provisions. Your use of the Services may also be subject to other laws. You expressly agree that exclusive jurisdiction for any claim or dispute with Apple or relating in any way to your use of the Services resides in the courts of the State of California.

39. Further, California's substantive laws may be constitutionally applied to the claims of Plaintiffs and the Class under the Due Process Clause, 14th Amend., § 1, and the Full Faith and Credit Clause, Art. IV § 1 of the U.S. Constitution. California has significant contact, or significant aggregation of contacts, to the claims asserted by Plaintiffs and all class members, thereby creating state interests that ensure that the choice of California state law is not arbitrary or unfair.

1 40. Apple's United States headquarters and principal place of business is
2 located in California. Apple also owns property and conducts substantial business
3 in California, and therefore California has an interest in regulating Apple's conduct
4 under its laws. Apple's decision to reside in California and avail itself of
5 California's laws, and to engage in the challenged conduct from and emanating out
6 of California, renders the application of California law to the claims herein
7 constitutionally permissible.
8

9 41. California is also the state from which Apple's alleged misconduct
10 emanated. This conduct similarly injured and affected Plaintiff and all other class
11 members.

12 42. The application of California laws to the Class is also appropriate
13 under California's choice of law rules because California has significant contacts
14 to the claims of Plaintiffs and the proposed Class, and California has a greater
15 interest in applying its laws here than any other interested state.
16

17 **VII. CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **(Breach/Disaffirmance of Contract)**

20 43. Plaintiffs repeat and re-allege herein the foregoing allegations.

21 44. All Game Currency that Apple presents for sale constitutes an offer to
22 enter into a sales contract.
23
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1 45. All Game Currency purchased by a minor constitutes acceptance of
2 Apple's offer.

3 46. Every payment made by the members of the Class for the purchase of
4 Game Currency by their minor children constitutes consideration for the provision
5 of the Game Currency.

6 47. Accordingly, all transactions that are the subject of this Complaint are
7 possessed of the three elements of a contract, i.e., offer, acceptance and
8 consideration.
9

10 48. Because the persons who accepted Apple's offers were minors,
11 however, all such contracts are voidable and may be disaffirmed as a matter of
12 California law.

13 49. Accordingly, all such contracts should be voided and the Class should
14 be made whole through restitution and all other remedies available under
15 California law.
16

17 **SECOND CAUSE OF ACTION**

18 **(Violation of the California Consumers Legal Remedies Act)**

19 50. Plaintiffs repeat and re-allege herein the foregoing allegations.

20 51. At all times relevant hereto, there was in full force and effect the
21 California Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750.
22

23 52. Plaintiffs and the other class members are consumers within the
24

1 meaning of Cal. Civ. Code § 1761(d).

2 53. Apple violated the CLRA's proscription against the concealment of
3 the characteristics, use, benefit, or quality of goods by actively marketing and
4 promoting certain gaming Apps as "free" with the intent to induce from minors the
5 purchase of Game Currency. Specifically, Apple has violated: (a) § 1770(a)(5)'s
6 proscription against representing that goods have uses or characteristics they do not
7 have; (b) § 1770(a)(7)'s proscription against representing that goods are of
8 particular standard or quality when they are of another; (c) § 1770(a)(14)'s
9 proscription against "Representing that a transaction confers or involves rights,
10 remedies, or obligations which it does not have or involve, or which are prohibited
11 by law."

13 54. Under California law, a duty to disclose arises in four circumstances:
14 (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the
15 defendant had exclusive knowledge of material facts not known to the plaintiff;
16 (3) when the defendant actively conceals a material fact from the plaintiff; or (4)
17 when the defendant makes partial representations but also suppresses some
18 material facts.
19

20 55. Apple owed a duty to disclose material facts about the Game
21 Currency embedded in games it marketed, advertised and promoted to children as
22 "free." Apple breached such duty as alleged in this Complaint.
23
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1 56. Plaintiffs and the Class suffered actual damages as a direct and
2 proximate result of Apple's actions, concealment and/or omissions in violation of
3 the CLRA, as evidenced by the substantial sums Apple pocketed.

4 57. Plaintiffs, on behalf of themselves and for all those similarly situated,
5 demand judgment against Apple for equitable relief in the form of restitution
6 and/or disgorgement of funds paid to Apple.

7 58. In accordance with § 1782(a) of the CLRA, on April 11, 2011,
8 counsel in the related case *Meguerian v. Apple, Inc.* served Apple, by certified
9 mail, with notice of its alleged violations of the CLRA.
10

11 59. If Apple does not fully meet the demand set forth in that letter, then
12 Plaintiffs will amend or seek leave to amend this complaint in order to seek the
13 following relief under CLRA § 1780, for Apple's violations of CLRA §§
14 1770(a)(5) and (a)(7):

- 15 • actual damages under Cal. Civ. Code § 1780(a)(1);
- 16 • punitive damages under Cal. Civ. Code § 1780(a)(4);
- 17 • attorneys' fees and costs under Cal. Civ. Code § 1780(d); and
- 18 • any other relief the Court deems proper under Cal. Civ. Code
- 19 § 1780(a)(5).
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THIRD CAUSE OF ACTION

(Violation of Bus. & Prof. Code § 17200 *et seq.*)

60. Plaintiffs repeat and re-allege herein the foregoing allegations.

61. Plaintiffs bring this cause of action on behalf of themselves, on behalf of the other class members, and in their capacity as private attorneys general against Apple for its unlawful, unfair, fraudulent and/or deceptive business acts and/or practices pursuant to California's Unfair Competition Law (UCL), Business & Professions Code § 17200 *et seq.*, which prohibits unlawful, unfair and/or fraudulent business acts and/or practices.

62. Plaintiffs assert these claims as representatives of an aggrieved group and as private attorneys general on behalf of the general public and other persons who have expended funds that Apple should be required to reimburse under UCL § 17200 *et seq.*

63. This claim is predicated on the duty to refrain from unlawful, unfair and deceptive business practices. Plaintiffs and the other class members hereby seek to enforce a general proscription of unfair business practices and the requirement to refrain from deceptive conduct.

64. The UCL § 17200 *et seq.* prohibits acts of "unfair competition." As used in this section, "unfair competition" encompasses three distinct types of misconduct: (a) "unlawful...business acts or practices;" (b) "unfair fraudulent

1 business acts or practices;” and (c) “unfair, deceptive or misleading advertising.”

2 65. Apple violated the UCL by engaging in conduct that violated each of
3 the three prongs identified by the statute as set forth throughout this Complaint.

4 66. Apple committed an *unlawful* business act or practice in violation of
5 the UCL § 17200 *et seq.* when it violated the CLRA.

6 67. Apple committed *unfair and fraudulent* business acts and practices in
7 violation of the UCL §§ 17200 and 17500 *et seq.* by actively advertising,
8 marketing and promoting certain gaming Apps as “free” with the intent to lure
9 minors to purchase Game Currency in a manner likely to deceive the public.
10

11 68. Apple’s deceptive practices were specifically designed to induce the
12 children of Plaintiffs and the other members of the Class to purchase Game
13 Currency.

14 69. Apple’s deceptive practices have deceived and/or are likely to deceive
15 Plaintiffs and members of the consuming public.
16

17 70. As a direct and proximate cause of Apple’s violation of the UCL,
18 Plaintiffs and the Class have suffered harm in that they have not been reimbursed
19 for the purchases of Game Currency their children made from Apple.

20 71. As a direct and proximate result of Apple’s violation of the UCL,
21 Apple has been unjustly enriched and should be required to make restitution to
22
23
24

1 Plaintiffs and the Class or disgorge its ill-gotten profits pursuant to the UCL §
2 17203.

3 72. Plaintiffs, on behalf of themselves and for all others similarly situated,
4 demand judgment against Apple for injunctive relief in the form of restitution,
5 and/or disgorgement of funds paid to Apple as alleged herein.

6 **FOURTH CAUSE OF ACTION**

7 **(Unjust Enrichment (alternative claim))**

8
9 73. Plaintiffs repeat and re-allege herein the foregoing allegations.

10 74. Plaintiffs and the Class have conferred benefits on Apple by paying
11 for the Game Currency their children purchased from Apple without their
12 authorization.

13 75. Apple knowingly and willingly accepted those monetary benefits from
14 Plaintiffs and the Class.

15 76. Under the circumstances alleged herein, it is inequitable for Defendant
16 to retain such benefits at the expense of Plaintiffs and the Class.

17 77. Apple has been unjustly enriched at the expense, and to the detriment
18 of, Plaintiffs and the Class by wrongfully collecting money to which Apple, in
19 equity, is not entitled.

20 78. Plaintiffs and the Class are entitled to recover from Apple all amounts
21 wrongfully collected and improperly retained by Apple, plus interest thereon.
22
23
24

1 79. As a direct and proximate result of Apple's unjust enrichment,
2 Plaintiffs and the Class have suffered injury and are entitled to reimbursement,
3 restitution and disgorgement from Apple of the benefits conferred by Plaintiffs and
4 the Class.

5 80. As a direct and proximate result of Apple's misconduct as set forth
6 herein, Apple has been unjustly enriched.

7 WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for
8 an Order as follows:
9


- 10 A. Finding that this action satisfies the prerequisites for maintenance as
11 a class action under Fed. R. Civ. P. 23(a), (b)(2) and (b)(3), and
12 certifying the Class defined herein;
- 13 B. Designating Plaintiffs as representatives of the Class and their
14 counsel as class counsel;
- 15 C. Entering judgment in favor of Plaintiffs and the Class and against
16 Apple;
- 17 D. Awarding Plaintiffs and members of the Class their individual
18 damages and attorneys' fees and allowing costs, including interest
19 thereon; and/or restitution and equitable relief; and
20
- 21 E. Granting such further relief as the Court deems just.
22
23
24

VIII. JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: April 22, 2011

Respectfully Submitted,

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